

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

GARY E. ALDRIDGE v. STATE OF TENNESSEE

Appeal from the Circuit Court for Wayne County
No. 13317 Jim T. Hamilton, Judge

No.M2003-00703-CCA-R3-HC -Filed October 19, 2004

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. The appellant has appealed the trial court's order summarily dismissing the appellant's petition for the writ of habeas corpus. In that petition the appellant alleges that the indictment which forms the basis of his convictions for aggravated kidnapping, three counts of aggravated rape, spousal rape, and two counts of assault, is void because the counts therein fail to allege sufficient facts to vest jurisdiction in the convicting court. Upon a review of the record in this case we are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Gary E. Aldridge, pro se, Clifton, Tennessee.

Paul G. Summers, Attorney General & Reporter; Michael Markham, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d

157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). However, if after a review of the habeas petitioner's filings the trial court determines that the petitioner would not be entitled to relief then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 214 Tenn. 476, 381 S.W.2d 280 (Tenn. 1964).

A valid indictment is essential to vest jurisdiction in the convicting court, and therefore an indictment that is so defective that it fails to invest jurisdiction may be challenged in a habeas corpus proceeding. State v. Wyatt, 24 S.W.3d 319, 320-23 (Tenn. 2000). In the instant case the indictment about which the appellant complains is attached to the habeas corpus proceedings and is in the record on appeal. Each count therein names the appellant as the accused, the date of the offense, the actus reus and mens rea of each offense, and each count references the statutes defining the charged offenses. Given these circumstances, it is clear that each count in this indictment is sufficient to vest jurisdiction in the convicting court. See State v. Sledge, 15 S.W.3d 93, 95 (Tenn. 2000); State v. Carter, 988 S.W.2d 145, 148 (Tenn. 1999); Ruff v. State, 978 S.W.2d 95, 100 (Tenn. 1998); State v. Hill, 854 S.W.2d 725, 728 (Tenn. 1997). Thus, the trial court was correct in summarily dismissing the appellant's habeas corpus petition.

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action is taken in a proceeding before the trial judge without a jury, and

such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. . .

We find that this case meets the criteria of the above-quoted rule and therefore we grant the State's motion filed under Rule 20 and we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE